

GOVERNMENT PROCUREMENT IN NEW ZEALAND

POLICY GUIDE FOR PURCHASERS

**Ministry of Economic Development
Government Procurement Development Group**

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INTRODUCTION

This interim revision of the policy guide is intended to help government departments¹ and other taxpayer-funded agencies to support the Government's procurement policy, pending further guidance on the "single government procurement policy" incorporating sustainability which is to be extended across the wider state services.² It is hoped that State-Owned Enterprises (SOEs) and local authorities will also base their procurement approach on this guide, which complements, and should be read in conjunction with, the detailed good practice guidance offered in the Auditor-General's June 2008 publication ["Procurement Guidance for Public Entities"](#).

In New Zealand's state sector management context, Chief Executives are responsible and strictly accountable for the efficient and effective operation of their agencies, and have substantial managerial discretion in operational matters such as procurement.

Note: Government departments are required by Cabinet also to follow the [Mandatory Rules for Procurement by Departments \(2006\)](#).

Managerial support of the procurement policy is crucial for its success. CEOs are asked to ensure that this policy guide is reflected in their agencies' internal procedures and purchasing manuals. Procurement managers should take similar steps to ensure that consultants, prime contractors and other agents engaged to advise on or assist with procurement are aware of the Government's policy and help the agency to support it.

The procurement policy has general application to acquisition by purchase, hire, lease, rental, exchange and competitive tendering and contracting (outsourcing) arrangements. In this guide the focus is on purchasing by agencies of goods and services either directly or through a third party, and the terms "procurement" and "purchasing" are used interchangeably.

¹ "Government departments" in this guide means the public service departments listed in the First Schedule to the State Sector Act 1988, see the website on Statutes of New Zealand, http://www.legislation.govt.nz/browse_vw.asp?content-set=pal_statutes plus New Zealand Police and New Zealand Defence Force.

² Sustainable Business: Government Procurement, Economic Transformation and Sustainability [CAB Min (07) 17/2B (21 May 2007)]

GOVERNMENT PROCUREMENT POLICY FRAMEWORK

Note: This framework is under revision to emphasise that sustainability considerations should be taken into account when making whole-of-life value for money decisions, in accordance with recent decisions by Cabinet (see footnote 2 above).

The Government expects its departments, and encourages other public sector agencies, to be guided in their procurement by the following principles:

- best value for money over whole of life;
- open and effective competition;
- full and fair opportunity for domestic suppliers;
- improving business capabilities, including e-commerce capability;
- recognition of New Zealand's international trade obligations and interests and
- requiring sustainably produced goods and services wherever possible, having regard to economic, environmental and social impacts over their life cycle.

The Government has also endorsed the 1999 [APEC Non-Binding Principles on Government Procurement \(NBPs\) on Government Procurement](#) as revised in 2006 (value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination), and incorporating the 2004 APEC Transparency Standards on Government Procurement.

The procurement policy approach supports the Government's economic transformation objectives, through enhanced identification of competitive opportunities for domestic enterprises and their capabilities to exploit those opportunities. It does not, however, impose on purchasing agencies a requirement to use their purchasing as a direct lever for industry or regional development. The policy does not include domestic price preference or "offsets" (requirements on government buyers to obtain commitments from overseas buyers to assist domestic industry).

Note: *As assurance that purchasers are affording full and fair opportunity to domestic suppliers, the Government has introduced a requirement for departments to include in their internal documentation basic reasons, with senior management sign-off, justifying the rejection of any New Zealand tender for contract at or above \$100,000.³*

To ensure the transparency of its procurement market for domestic and international suppliers, the Government also requires departments to use the [Government Electronic Tenders Service \(GETS\)](#) for publication of all open approaches to the market, including invitations to tender for contracts at or above \$100,000. Departments must also post on GETS brief award notices of contracts at or above \$100,000. Annual procurement plans must also be published on GETS. (See [Mandatory Rules for Procurement by Departments 2006](#) for details.

³ CAB Min (07) 17/2B (21 May 2007).

New Zealand also has an interest in transparent and open government procurement markets for its exporters. New Zealand participates in continuing APEC work towards improved transparency and liberalisation of government procurement markets in the Asia-Pacific region. New Zealand is an observer in the World Trade Organisation (WTO) Committee on Government Procurement and is party to free trade agreements with government procurement provisions (see International Context and Appendix 2 for additional details).

New Zealand's own government procurement market is open and competitive, and the policy does not call for discrimination against foreign suppliers. This global non-discriminatory procurement policy approach is reinforced by mutual commitments to equal access and treatment for suppliers of free trade agreement partner countries. Details of these commitments are given in Appendix 2. The procurement policy does, however, also call for government purchasers to be able to show that they have not denied full, fair and reasonable opportunity to domestic suppliers to compete.

Agencies should also note that environmental issues are an increasingly important element in procurement policy, and they should ensure that their procurement is consistent with the environmental policies of the Government (see Environmental Issues).

POLICY COMPLIANCE WHEN USING PURCHASING CONSULTANTS AND AGENTS

Public sector agencies sometimes employ consultants to advise on or manage the procurement process and make recommendations on purchasing decisions. The costs of dealing with a multiplicity of suppliers have in some cases led to agencies contracting out purchasing of goods and services to a prime vendor who assumes commercial responsibility for sub-contract sourcing decisions. In building projects, agents such as architects and prime contractors are likely to have considerable discretion in decisions affecting the sourcing of goods and services representing very significant business opportunities for subcontract suppliers.

In such cases, this policy guide should be incorporated or referred to in the relevant briefs, specifications and instructions to consultants, agents and prime contractors. They should be required to assist the agency to comply with the policy. This should include encouragement to use the services of the [Industry Capability Network \(ICN\)](#) to help in identifying potential competitive New Zealand sources for partnering/subcontracting arrangements in major procurement projects.

POTENTIAL VALUE FOR MONEY ADVANTAGES OF LOCAL SUPPLY

The Government expects its agencies to be fair but demanding buyers, who will purchase from internationally competitive domestic suppliers where they offer best value for money.

This requires due consideration of potential commercial and practical advantages in purchasing locally produced goods and services. These may include:

- a better price and total or whole-of-life ownership cost;
- better through-life support (e.g. better availability of spare parts and after-sales service);
- shorter supply lines and/or delivery lead times;
- reduced inventory costs;
- reduction or elimination of exchange rate risks;
- easier and cheaper communications/transport;
- simpler and cheaper contract administration and dispute resolution;
- greater scope for cooperative and innovative product development and influence over the supply base;
- continuity of supply and more direct control over orders;
- goods/services better adapted to local conditions; and
- better knowledge of the producer's reputation and reliability.

In general, it will often make good business sense, in terms of value for money and a reliable supply base, that goods and services should be sourced from local suppliers where the necessary standards of competitiveness, quality and availability are met.

The Government's procurement policy does not give preference or weighting to local content in itself. Similarly, there should be no discrimination on the basis of ownership of a supplier or preference for domestic equity in itself. Having given domestic suppliers full and fair opportunity and assessed any commercial and practical value for money advantages associated with local supply, agencies should buy from the best source available, according to their own judgement of all costs and benefits.

DOCUMENTING CONSIDERATION OF TENDERS FOR CONTRACTS AT OR ABOVE \$100,000

- [Policy statement](#)
- [Definition of "New Zealand Tender"](#)
- [Documentation Sign-off](#)

Policy statement

As previously explained in this Guide, a fundamental objective of the government procurement policy is best value for money through open and effective competition. This requires proper evaluation of whole-of-life value for money factors, including where relevant any practical and commercial advantages associated with local supply. In this context, the policy principle of "full and fair opportunity for domestic suppliers" aims to ensure that any such competitive advantages are not overlooked.

As further assurance that all relevant aspects have been considered, Cabinet has agreed that "departments be required to ensure that their internal documentation of tender short-listing and contract award decisions (for contracts at or above \$100,000) includes assurance of compliance with the government procurement policy, including justification for the rejection of any New Zealand tender, signed off at appropriate senior management level".¹

It should already be standard practice for departments' internal documentation of a procurement process, including tender evaluation, to state reasons for selecting or rejecting any tender (domestic or foreign), after consideration of all relevant whole-of-life factors. Such reasons should relate to the requirements and criteria stated in the documents provided to all tenderers.

For consistency with the value for money objective and with the non-discriminatory trade approach of the government procurement policy departments must continue to base short-listing and contract award decisions on competitive value for money merit, and buy from the best source available, domestic or foreign.

Accordingly, the Cabinet direction is not to be interpreted as requiring preferential short-listing or final selection of New Zealand tenders. The aim is to ensure full and fair consideration of the objective merits of New Zealand as well as other tenders in a whole-of-life value for money context, in accordance with existing policy. By using open tendering procedures, [specifying requirements](#) in functional and performance terms as far as possible, and evaluating tenders on a whole-of-life basis, departments will maximise competitive opportunities for local supply, and their own prospects of achieving best value for money in a globally competitive market.

Documentation of the reasons for rejection of any New Zealand tenders will also be a useful source of data to inform the government's supplier capability development programmes, which aim to help New Zealand suppliers address shortcomings in their tendering practices and maximise their natural competitive advantages in the domestic market.

Definition of "New Zealand Tender"

In this context, a "New Zealand tender" is one in which there is substantial or significant New Zealand content.

In order to identify substantial or significant New Zealand content, departments will need to ask tenderers to provide sufficient information to give a broad indication of the place of origin of goods or services offered. Questions in tender documents should seek such information as is readily available on the following elements:

- place of final manufacture
- source of major components or materials;
- place of modification and assembly;
- origin and ownership of intellectual property;
- location of research and development effort;
- origin of design; and
- contribution to service and support back-up.

For any given procurement, departments should use their own judgement in assessing the relevance and significance of this information for the achievement of best value for money, in terms of the stated requirements and criteria of the procurement.

Documentation Sign-off

To ensure compliance with the Cabinet direction that documentary assurance of compliance with the government procurement policy be signed off at "appropriate senior management level", internal delegation levels should be reviewed and approved by the Chief Executive. For procurements of major size and significance, Chief Executive sign-off may be appropriate.

ENVIRONMENTAL ISSUES

*Note: This section is pending revision and updating to take account of the development of sustainable procurement policy being led by the Ministry of Economic Development, in collaboration with the Ministry for the Environment.*⁴

- General
- Whole-of-Life Procurement Factors
- Timber Procurement
- Ozone Depleting/Hazardous Substances
- Environmental Accreditation
- Documentation/Supplier Information

General

The Government has adopted a National Energy Efficiency and Conservation Strategy (September 2001) and a New Zealand Waste Strategy (March 2002). These set national targets for increased efficiency in energy and resource use in all sectors of society. Government agencies are expected to take account of these Strategies and targets in their procurement in ways that are consistent with the value for money and other policy and good practice considerations set out in this policy guide.

Whole-of-life Procurement Factors

By taking account of cost savings obtainable from use of energy efficient products and technologies, agencies' procurement can contribute to achievement of the National Energy Efficiency and Conservation Strategy target of a 15 percent improvement in energy efficiency over five years in central government. The Energy Efficiency and Conservation Authority (EECA), the principal body responsible for delivering the Strategy, provides assistance to purchasing agencies under its EnergyWise Government programme. EECA provides partial funding for energy audits of buildings and vehicle fleets, and low cost loans to finance the purchase of energy efficient equipment.

In their assessment of value for money over whole of life, purchasing agencies should give due consideration to minimisation of waste and disposal costs. By specifying products that can be reused and/or contain recycled content wherever reasonably possible and cost-effective, government agencies will help to maintain and develop the market demand which makes local waste collection, recovery and recycling industries viable and efficient.

Timber Procurement ([see MAF website](#))

⁴ CAB Min (07) 17/2B (21 May 2007)

The Government also expects its agencies to take all reasonable steps to ensure that timber and timber products procured, including tropical timber, are from legally logged and sustainably managed sources. An internationally recognised sustainable forestry accreditation scheme (including New Zealand forests) is provided by the Forest Stewardship Council.

*Note: Departments are now **required** to seek legally sourced timber and wood products. For updated policy information refer to the MAF website at the above link.*

Ozone Depleting/Hazardous Substances

New Zealand is a party to international environment agreements concerning: the protection of the ozone layer (Montreal Protocol); trans-boundary movements of hazardous wastes (Basel Convention); and imports/exports of a range of dangerous chemicals (Rotterdam and Stockholm Conventions). Related New Zealand measures are set out in legislation such as the Ozone Layer Protection Act 1996 and Regulations. The latter, for example, have implications for procurement and disposal of products and services involving ozone depleting substances e.g. refrigeration, air conditioning, and fire protection. For details of relevant controls and requirements see the [Laws and treaties page](#) on the website of the Ministry of the Environment.

Environmental Accreditation

Procurement managers and staff should familiarise themselves with environmental quality assurance schemes which are increasingly available to help simplify procurement decisions in this complex area. By including environmental accreditation among their criteria for evaluating suppliers' bids, agencies can help to improve the market for environmentally friendly and energy-efficient goods and services. Accreditation may be based on life cycle analysis (production, use and disposal) such as the Government-endorsed Environmental Choice New Zealand, on single resource use such as energy efficiency labelling of appliances, or on sustainable management practice such as the ISO 14000 series.

Documentation/Supplier Information

Information sent to suppliers should include a statement of the agency's approach to compliance with the Government's environmental policies. Consideration should be given to developing appropriate standard clauses for tender and contract documentation. These could include requests for documentation on environmental impacts such as accreditations obtained, sustainable production practices, energy efficiency, recycled content, durability and reuse options, hazardous material content, and end-of-life disposal provisions. Unless specifically requested, such resource impact information is not likely to be included in offers to supply.

PROMOTING OPPORTUNITY THROUGH GOOD PRACTICE

Note: The advice in this section is subject to the requirements of the [Mandatory Rules for Procurement by Departments \(2006\)](#).

- Purchasing Methods
- Forward Procurement Plans
- Buying Patterns
- Transparency of Opportunities for Suppliers
- Researching the Market
- Defining Requirements
- Dealing with Unfamiliar Products: Risk Aversion
- Standards
- Quality Assurance
- Evaluation
- Debriefing
- Supplier Complaints

Achieving the intent of the Government's procurement policy depends not only on awareness of the policy principles, but also on good practice. Cost-effective procurement may involve new approaches and procedures to take advantage of changes in the marketplace and technology, but competition remains a key principle of policy and good practice. This will help to ensure the best value for money, while avoiding unfair denial of opportunities or discrimination.

Agencies' purchasing procedures should be guided by the Auditor-General's publication "[Procurement: A Statement of Good Practice](#)". This sets out the principles of good practice and gives detailed advice on planning and conducting the procurement process, and contract management.

The following discussion in this policy guide supplements the Auditor-General's advice by commenting on some particular areas where lack of attention to good practice could frustrate the Government's procurement policy by unduly restricting competitive opportunities for domestic and other suppliers.

Purchasing Methods

Decisions on how to approach the market are best made in the context of a procurement plan which may be simple or complex, according to the degree of risk of the procurement and difficulty in specifying the requirement. The plan should be based on adequate market research (see Researching the Market).

In principle, the advertising of an open request for tender should be the preferred method for substantial purchases, as it offers all interested domestic and other suppliers fair and equitable opportunity, and allows evaluation of a range of competing offers in the assessment of best value for money.

At the same time, the method should be appropriate to the market for the particular goods or services, and the circumstances of the procurement. These considerations may mean that open call for tender is not practicable or cost-effective

Note: *Departments are required to use open tendering procedures as the norm unless specified exceptions apply – see [Mandatory Rules for Procurement by Departments \(2006\)](#).*

A staged approach, e.g. invitation for registration of interest and pre-qualification of suppliers followed by request for tender from selected respondents (closed tendering), may be needed to limit a large field of potential tenderers to those with a realistic chance of success, without unduly restricting opportunity at the outset. This approach may be particularly appropriate for complex or high-value requirements, to minimise costs to suppliers and buyers in preparing and evaluating tenders.

Note: *A staged approach is allowed under the [Mandatory Rules for Procurement by Departments \(2006\)](#) provided that the initial stage (application to meet conditions of participation e.g. registration or pre-qualification) is open.*

A guideline for a staged IT procurement process, which is competitive and consistent with the Government procurement policy and good practice, is set out on page 48 of the State Services Commission/Treasury publication *Guidelines for Managing and Monitoring Major IT Projects*.

Note: *The [Mandatory Rules for Procurement by Departments \(2006\)](#) prescribe procedures for staged tendering (including open supplier registration/qualification procedures).*

Forward Procurement Plans

Publication of forward procurement plans with advance notice of requirements may enable suppliers to:

- develop and produce goods to order if they are given reasonable time to do so;
- modify their product(s) to meet the requirements;
- offer innovative and competitive solutions; and
- develop appropriate joint venture proposals.

Note: *Publication of Annual Procurement Plans is now a requirement under the [Mandatory Rules for Procurement by Departments \(2006\)](#)*

Buying Patterns

Combining frequent purchases in long-term contracts or standing offer arrangements will often be more cost-effective for both buyers and suppliers. Purchasing of small and regular requirements under period contracts arranged by brokers may also be economical.

Collaborative procurement arrangements between public sector agencies are also encouraged by the Government, and are facilitated by e-procurement developments. Each agency should assess the possibility of savings through co-ordinating some or all purchases of goods and services in common use with other government organisations. “Syndicated procurement” arrangements should be seriously considered. For current developments and opportunities to participate, agency procurement staff should consult the Public Sector Procurement Community of Practice workspace <https://see.govt.nz/procurement/default.aspx> (a password-protected interactive forum).

Advantages of committing to supply arrangements over an extended period should be weighed against possible effects on competitive opportunities for domestic suppliers, and agencies’ own interests in maintaining a competitive and innovative supplier base.

Transparency of Opportunities for Suppliers

To promote competition, all publicly available opportunities (e.g. invitations to tender or submit proposals, pre-qualify or register interest) should be advertised on [GETS](#) which may be supplemented by use of other electronic and print media such as the metropolitan newspapers and trade or specialist journals.

Publication of contract award notices provides a further source of market information to suppliers interested in future opportunities.

Note: The [Mandatory Rules for Procurement by Departments \(2006\)](#) require the use of GETS for publication of tender opportunities, and also of contract award notices for procurement valued at or above \$100,000.

Researching the Market

The extent of market research should be in reasonable proportion to the value, significance and/or complexity of the requirement. If a public call for tender or registration of interest, or similar open approach to the market, is not considered cost-effective or appropriate⁵, research should aim to identify a reasonable range of competitive suppliers. Even where open tendering or registration of interest is to be undertaken, the formal process should be preceded by sufficient market research to ensure that the documents are robust and meaningful.

Information about potential suppliers and alternative solutions will be available from various sources including informal contacts with firms, internal records, print and electronic publications (such as business directories, suppliers’ brochures, trade journals), industry associations and environmental accreditation schemes (see Environmental Accreditation [\[insert link\]](#)). A growing number of suppliers are making their company information available on the Internet.

⁵ And if publication on GETS is not required under the [Mandatory Rules for Procurement by Departments \(2006\)](#)

Publication of an open “request for information” (RFI) on GETS is another method of obtaining preliminary information on potential market solutions to a broadly outlined requirement. It should be noted, however, that it is not acceptable practice to use the RFI as a substitute for an open call for initial registration of interest (ROI) and prequalification in a staged tendering process.

For information about New Zealand suppliers, their products and their capabilities relevant to major projects, agencies, project developers and prime contractors should consult the relevant sector specialist of the [ICN](#).

As agencies are ultimately accountable for their decisions about whom to approach in the market, procurement staff should document their market research, including any direct contacts with potential suppliers.

Established sources of supply and any existing registered/prequalified supplier lists should be regularly reviewed. Existing lists should be open for application by new suppliers at any time, and an invitation to apply should be advertised at reasonable intervals.

Note: it is a requirement of the [Mandatory Rules for Procurement by Departments \(2006\)](#) that any supplier lists in continuous use be published on GETS.

Agencies should also keep a record of competitive suppliers who have responded to invitations in the past. Instances where suppliers have consistently proved to be uncompetitive or non-performing should also be documented in case of need to justify decisions to exclude them from selection in future.

Defining Requirements

Avoid specifying any feature which unnecessarily discriminates, either directly or indirectly, against any supplier or group of suppliers (e.g. a feature specific to a particular technology or brand of product). If a brand name needs to be used, a term such as “or equivalent” should be added.

Note: a non-discriminatory approach in specifications is required under the [Mandatory Rules for Procurement by Departments \(2006\)](#)

Requirements should be defined, and specifications written, in functional and performance terms wherever possible, in conjunction with a material or technical specification if necessary. This will encourage effective competition by giving opportunity for suppliers to develop solutions capable of satisfying the agency’s requirements.

Pre-tender briefings and discussions may provide an opportunity for prospective parties to improve their understanding of the perceived requirement. It may be useful to consult relevant industry organisations and/or the [ICN](#). Certainly, more than one potential supplier should be involved in the preliminary discussions, to avoid supplier imprinting.

Specifications for standing requirements should be reviewed from time to time.

Dealing with Unfamiliar Products: Risk Aversion

A reason sometimes given by buyers reluctant to buy certain domestic products or services is that “they are unproven”, a risk averse attitude. This may be prudent in principle but can easily be taken to an undesirable extreme. It may unnecessarily reduce competition and cause buyers to miss out on innovative, cost effective and environmentally preferable solutions.

Procurement staff uncertain about a new domestic product should seek additional information from the [ICN](#), users of the product, or sources of environmental impact information (see Environmental Issues [\[insert link\]](#)) as appropriate.

Specifying appropriate standards and quality assurance (see below) will also help to ensure fitness for purpose and minimise risk when accepting innovative solutions or sources of supply.

Standards

Specifications should refer to domestic and international standards applicable in New Zealand. Standards specified should be the same or equivalent for supplies from any source. Information about applicable standards is available from [Standards New Zealand](#). There is also a range of environmental accreditation schemes (see Environmental Issues [\[insert link\]](#)).

Quality Assurance

It will not be cost-effective to require formal quality assurance for all purchases, particularly small purchases with low cost of non-compliance or failure. In these cases, normal commercial or industry practice (e.g. suppliers’ or manufacturers’ guarantees) may give adequate assurance of quality.

Where it is determined that there is a need for formal quality assurance, as in the case of highly technical or critical supplies, the required standard should be nominated in the specification or request for offer. Third-party certification of a supplier’s quality assurance to a recognised standard, such as the ISO 9000 series, provides objective evidence that the supplier can consistently produce a good or service meeting the requirements and minimises the need for inspection of the product or production process by the purchaser.

An up-to-date listing of accredited certifying bodies in New Zealand and Australia is available on request from the Joint Accreditation System of Australia and New Zealand. JAS-ANZ has also compiled a register of certified suppliers which can be consulted to determine the quality assurance status of potential suppliers of the product or service required.

The Telarc SAI Limited Q-Base code, which is based on ISO 9000, makes quality assurance certification more accessible to smaller companies with limited resources and may well be adequate as an alternative formal quality system for less critical supplies. See the [Telarc website](#).

The [ICN](#) also includes suppliers' quality assurance certification details in its domestic industry capabilities database.

Evaluation

Tenders should be evaluated against selection criteria which have been disclosed, in broad categories at least, in the tender documents (as disclosure may create enforceable obligations). Suppliers' claims should be checked, particularly regarding standards and quality assurance, domestic servicing and through-life support, and environmental impact from production, use and disposal.

Note: The [Mandatory Rules for Procurement by Departments \(2006\)](#) require publication in the tender documents of the essential requirements and evaluation criteria for the procurement.

Applicable customs duties and GST must be taken into account in the pricing of imported goods. A customs broker or the New Zealand Customs Service will be able to advise if the goods are subject to duty.

Purchasing agencies should also be alert to the possibility of low-priced tenders involving dumped or subsidised imports which unfairly compete with New Zealand products and could be subject to an application for trade remedies under the Dumping and Countervailing Duties Act 1988. For advice in such cases, purchasers should contact the Trade Remedies Group of the Ministry of Economic Development.

Adequate records of the evaluation process and the reasons for final decisions must be kept. Purchasing agencies are accountable for purchasing decisions and may be required to provide information about them in cases of queries raised by unsuccessful tenderers and complaints investigations by the Ministry of Economic Development or the Auditor-General, or requests under the Official Information Act, for example.

Debriefing

Information to tenderers should include notice that debriefing will be available on request, and give relevant contact details. This is important for good working relationships between buyers and suppliers, and may be a source of useful feedback from the marketplace, particularly in more complex purchases.

Note: *supplier debriefing is a requirement of the [Mandatory Rules for Procurement by Departments \(2006\)](#).* The debriefing process should be as transparent as possible, with frank and honest exchange of information. Limits will be imposed, however, by the requirements of commercial confidentiality and need to maintain fair competition between suppliers.

Debriefing should help unsuccessful domestic and other suppliers understand what they did, or are doing, to make their bids uncompetitive or how their goods or services might be further developed. Successful tenderers may also be interested in

knowing how they performed against the evaluation criteria to help them in continuing to prepare competitive bids for future purchasing requirements.

Supplier Complaints

Purchasing agencies should give fair and objective consideration to complaints from domestic suppliers that they have not been given full, fair and reasonable opportunity, or from foreign suppliers that they have been discriminated against. Unresolved complaints may be investigated by the Ministry of Economic Development (Government Procurement Development Group) in consultation with the purchasing agency (see Appendix 1). If necessary the Ministry will report to relevant Ministers with recommendations on appropriate action. The Auditor-General or Ombudsmen may also investigate complaints of unfair treatment or mismanagement. In some cases it may be possible for an aggrieved supplier to have recourse to the courts for judicial review or an action for breach of contract. Procurement managers and purchasing staff should take care not to let a previous genuine and reasonable (even if mistaken) complaint prejudice their fair treatment of the supplier concerned in future.

APPENDIX 1: ROLE OF THE MINISTRY OF ECONOMIC DEVELOPMENT

The Ministry of Economic Development has a number of roles in relation to government procurement policy set out in this guide which are discharged by the Government Procurement Development Group (GPDG) of the Ministry.

- **Policy:** development and review of New Zealand's general procurement policy, including impacts on government operations and domestic business development and international aspects, for example, in the World Trade Organisation (WTO) and the Asia Pacific Economic Cooperation (APEC) regional grouping, and under free trade agreements. The GPDG reports to the Minister of Commerce as the Minister responsible for Government procurement policy.
- **Monitoring:** periodic informal surveys of government departments, other central government agencies, major Crown-owned entities and SOEs are to be conducted to monitor how effectively the Government's procurement policy has been understood and implemented; what problems may be encountered; and how the policy can be implemented most effectively.
- **Complaints Investigation:** complaints of alleged failure by public sector agencies to give domestic suppliers full, fair and reasonable opportunity are investigated by the GPDG in consultation with the purchasing agency concerned. The purchasing agency is expected to cooperate fully in such investigations and to be able to show that purchasing decisions and procedures are consistent with the policy and these guidelines. Valid complaints which have not been satisfactorily resolved between the parties will be referred to the Minister of Commerce and other relevant Ministers with recommendations for further action as appropriate. The review process is equally available to any foreign suppliers' complaints of discrimination.

The GPDG is the "designated body" responsible for investigation of complaints by Australian or Singaporean suppliers of non-compliance by New Zealand government agencies with the ANZGPA and Part 8 of the New Zealand/Singapore CEP Agreement, respectively (see Appendix 2).

For further information see www.procurement.govt.nz

APPENDIX 2: INTERNATIONAL AGREEMENTS

- Australia New Zealand Government Procurement Agreement (ANZGPA)
 - Entity Coverage
 - Monitoring/Complaints
 - Review
- New Zealand/Singapore Closer Economic Partnership (CEP) Agreement
- Trans-Pacific Strategic Economic Partnership Agreement (P4FTA)
- World Trade Organisation (WTO)
- Asia-Pacific Economic Cooperation (APEC)

Australia New Zealand Government Procurement Agreement (ANZGPA)

In Article 11 of the CER Agreement, the Australian Commonwealth Government and the New Zealand Government agreed that the maintenance of domestic purchasing preferences was inconsistent with the objectives of CER, and agreed to treat Australian and New Zealand content equally in their government purchasing. Subsequently, the Australian State and Territory Governments joined with the Commonwealth and New Zealand in the Australia New Zealand Government Procurement Agreement (ANZGPA).

Under the ANZGPA, the Australian (Commonwealth, State and Territory) and New Zealand Governments are committed to giving Australian and New Zealand goods, services and suppliers equal treatment and opportunity to compete on the basis of value for money in a “single trans-Tasman government procurement market”.

New Zealand’s CER/ANZGPA commitments are consistent with the Government’s globally non-preferential procurement policy. Some Australian jurisdictions maintain preference margins which may be applied against third country suppliers, but not New Zealand suppliers.

Entity Coverage

The ANZGPA commitments apply to procurement by New Zealand departments and statutory authorities directly controlled by the Government. New Zealand has also undertaken that the Government will use its best endeavours to encourage wider application of the Agreement, consistent with good commercial practice, by other authorities and bodies, SOEs and local government bodies, for example. Similar obligations have been undertaken in respect of New Zealand suppliers, goods and services by Australia at federal and state/territory government levels.

Monitoring/Complaints

The ANZGPA includes monitoring and complaints procedures, through designated bodies in each government, to investigate and try to resolve any claims of

discrimination. New Zealand's Designated Body is the Ministry of Economic Development (Government Procurement Development Group).

Review

The ANZGPA is subject to 5-yearly review, and may be revised at any time, as agreed between the signatories. Up to date copies of the Agreement are available from the Government Procurement Development Group of the Ministry of Economic Development. The text is also available on the Internet at www.apcc.gov.au.

New Zealand/Singapore Closer Economic Partnership (CEP) Agreement

Part 8 of the CEP Agreement is based on the concept of a "single New Zealand/Singapore government procurement market". Accordingly, New Zealand and Singapore agree to provide to each other's suppliers, goods and services equal opportunity to compete on the basis of value for money. Procuring entity coverage is similar to that in the ANZGPA. The New Zealand/Singapore commitments, however, explicitly apply only to procurement above a value threshold of 50,000 SDRs (IMF Special Drawing Rights), which in 2002 equates to NZ\$134,500. (The SDR threshold is expressed in fixed New Zealand and Singapore currency equivalents which are subject to periodic review).

New Zealand and Singapore also undertake that their procurement procedures shall be conducted in a manner consistent with the APEC Non-Binding Principles on Government Procurement and good commercial practice. This includes a commitment to advertising invitations to tender, or to register interest, in a publicly accessible medium. Post-award contract information, and supplier debriefing are to be made readily available on request. The Parties will enhance transparency at all stages and endeavour to provide a single point of publication for opportunity and contract award information, e.g. on the internet.

The Ministry of Economic Development (Government Procurement Development Group) is New Zealand's "designated body" for investigation of complaints by Singaporean suppliers that New Zealand Government agencies have not complied with their CEP Part 8 obligations. Any unresolved complaints may ultimately be subject to the formal Dispute Settlement chapter of the CEP.

The CEP Agreement, including Part 8, is subject to periodic review, and may be revised from time to time. The current text is available on the Ministry of Foreign Affairs website. Hard copies may also be obtained from the Ministry of Economic Development (Government Procurement Development Group).

Trans-Pacific Strategic Economic Partnership Agreement (P4 FTA)

This free trade agreement between New Zealand, Brunei, Chile and Singapore, which entered into force in 2006, includes a government procurement chapter based on the WTO principles of non-discrimination (national treatment) and transparency, and is consistent with the APEC Non-Binding Principles. The coverage of the chapter is largely defined by reference to schedules which contain lists of the central government purchasing entities each Party has agreed to include, and any specific

goods, services or sectoral exclusions. Procurement of goods and services below the value threshold of 50,000 SDRs (IMF Special Drawing Rights) is not covered, and the corresponding threshold for construction services is 5 million SDRs.⁷

The Parties agree to provide each other's covered goods, services and suppliers treatment no less favourable than that provided to their domestic goods, services and suppliers. Offsets (conditions requiring domestic content, licensing of technology, investment, counter-trade or similar requirements to encourage local development or improve the balance of payments) are prohibited.

The chapter prescribes in some detail procedures to be followed by covered entities in their procurement, to assure compliance with the commitments on non-discriminatory treatment and transparency. Open tendering is to be used in all but a specified range of exceptional circumstances. This includes publication of all invitations to tender, or opportunities to pre-qualify, contract award notices and any registered/qualified supplier lists in continuous use. In order to facilitate commercial opportunities, the Parties undertake to encourage the use of electronic communications in procurement, including a single electronic portal for access to comprehensive information on government procurement and supply opportunities.

The Parties agree to provide each other's suppliers impartial and timely access to domestic administrative or legal review of complaints of alleged breaches of the measures by which a Party implements the P4 FTA commitments on government procurement.

Note: New Zealand's commitments under the government procurement chapter of the P4 FTA are implemented through [the Mandatory Rules for Procurement by Departments \(2006\)](#).

Agreements under negotiation

Negotiations on the [New Zealand/Gulf Cooperation Council \(GCC\) Free Trade Agreement](#) successfully concluded on 31 October 2009 following six rounds of negotiations. It is likely that the agreement will be signed in the first half of 2010. Details of the agreement will be made public upon signature.

The [New Zealand/Hong Kong, China Closer Economic Partnership](#) was concluded by officials in the margins of APEC and announced jointly by the Prime Minister and Hong Kong's Chief Executive on 13 November 2009. It is likely that the agreement will be signed around March 2010. Details of the agreement will be made public following signature.

The [FTA negotiations with Korea](#) cover a comprehensive range of trade-related issues, including government procurement.

The [expansion of the Trans-Pacific Strategic Economic Partnership](#) (previously known as the P4 FTA) has emerged as having potential as a platform for a regional trade agreement and is expected to expand further in future. Negotiations are expected to commence in March 2010.